

Andhra Pradesh

Mutually Aided Cooperative Societies Act 1995

[Act No 30 of 1995]

An Act to provide for the voluntary formation of cooperative societies as accountable, competitive, self-reliant business enterprises, based on thrift, self-help and mutual aid and owned, managed and controlled by members for their economic and social betterment and for the matters connected therewith or incidental thereto

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the forty-sixth year of the Republic of India, as follows:

1. Short title, extent and commencement

(1) This Act may be called the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall come into force on such date as the Government may, by notification, in the Andhra Pradesh Gazette, appoint.

[Comment: This Act came into force, on 1st June 1995, even as the Andhra Pradesh Cooperative Societies Act, 1964 was and continues to be in force. Obviously, a distinction was being sought to be made between the cooperatives that were under the purview of the 1964 Act, and those that were to come under the purview of this Act.

This Preamble helps distinguish between the two types of cooperatives. Not all, but many of the cooperatives which were registered under the 1964 Act came into existence, not of their own volition, but as a result of government policy and intervention. They, therefore, had government aid and not mutual aid as their foundation. They were instruments of government policy, not instruments of their members, for their own good. They were channels for distribution of scarce resources, and, therefore, were at times monopolies - not competitive, nor business minded. The Government, and other financial players were part owners, and, therefore, ownership, management, and controls did not rest fully with members.

Under the 1964 Act, too, there were cooperatives which were true agents of their members, and that is the reason why this Act also provides for such cooperatives to choose voluntarily to come under the purview of this Act. Many court judgements have suggested that cooperatives are not creatures of the will of their members, and this Preamble makes clear that

associations registered as cooperatives under this **Act** are indeed creatures of their members, working for their betterment.]

2. Definitions

In this **Act** unless the context otherwise requires:-

- (a) “board” means the board of directors of a cooperative society;
- (b) “byelaws” means the byelaws of a cooperative society as originally framed or as altered from time to time in pursuance of this **Act**;
- (c) “cooperative principles” means the cooperative principles specified in section 3;
- (d) “cooperative society” means a mutually aided cooperative society registered under section 4 whose byelaws prohibit it from raising share capital from the Government, a cooperative society registered under section 7 of the Andhra Pradesh Cooperative Societies **Act**, 1964, if it amends its byelaws where necessary to reconstitute its capital base and in respect of other relevant aspects to be in accordance with this **Act**, and returns to the Government its share capital, if any, and either enters into a memorandum of understanding with the Government for any outstanding loans due to, or guarantees given by the Government or returns to the Government of such assistance and further gets itself registered under section 4 as a cooperative society under this **Act**;
- (e) “cooperative society with limited liability” means a cooperative society in which the liability of its members for the debts of the cooperative society in the event of its being wound up, is limited by its byelaws to such amount as they may undertake to contribute to the assets of the cooperative;
- (f) “cooperative society with unlimited liability” means a cooperative society the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute to any deficit in the assets of the cooperative society;
- (g) “cooperative tribunal” means the tribunal or tribunals constituted under section 32;
- (h) “deficit” means the net excess of expenditure over income,
- (i) “delegate” means a member nominated by a cooperative society to represent its interests in a federation;
- (j) “director” means a director of the board of directors;

(k) “federation” means a mutually aided cooperative society registered under section 4 whose members are mutually aided cooperative societies;

(l) “financial year” in relation to a cooperative society means the twelve month accounting period as provided for in the byelaws;

(m) “general body” in relation to a cooperative society means all the members of the cooperative society and includes a representative general body of the cooperative society referred to in section 20;

(n) “general meeting” means a meeting of the general body of a cooperative society;

(o) “Government” means the State Government of Andhra Pradesh;

(p) “member” means a member of a cooperative society;

(q) “office-bearer” means an individual elected by the general body or the board of the cooperative society to any office of such cooperative society in accordance with its byelaws;

(r) “Registrar” means the Registrar of Mutually Aided Cooperative Societies appointed under section 4 of this **Act**, and includes any other person on whom all or any of the powers of the Registrar under this **Act** are conferred;

(s) “surplus” means the net excess of income over the expenditure;

3. Cooperative principles and byelaws

Individuals or cooperatives intending to form into a cooperative society under this **Act** shall frame byelaws conforming to the following principles of cooperation, namely,

(a) membership of a cooperative society shall be voluntary and available without restriction of any social, political, racial or religious discrimination, to all persons who can make use of its services and are willing to accept the responsibilities of membership;

(b) cooperative societies are democratic organisations; their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary cooperative societies shall enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their cooperative societies. In other than primary cooperative societies, the administration shall be conducted on a democratic basis in a suitable form;

(c) share capital shall only receive a strictly limited rate of interest, if any;

(d) the economic results, arising out of the operations of a cooperative society belong to the members of that cooperative society and shall be distributed in such a manner as would avoid one member gaining at the expense of others, which shall be achieved:

(i) by provision for development of the business of the cooperative society;

(ii) by provision of common services; or

(iii) by distribution among the members in proportion to their transactions with the cooperative society;

(e) all cooperative societies shall make provision for the education of their members, officer-bearers and employees and of the general public, in the principles and techniques of cooperation, both economic and democratic;

(f) all cooperative societies, in order to best serve the interest of their members and their communities, shall actively cooperate in every practical way with other cooperatives at local, national and international levels having as their aim the achievement of unity of action by cooperators throughout the world.

[Comment: The **APMACS Act** came into force before the General Assembly of the International Cooperative Alliance met in September **1995** to revise the cooperative principles. As such the internationally accepted cooperative principles as they existed at the time of enactment of this **Act** have been incorporated in the **Act**. The Statement of Cooperative Identity passed by the ICA in September **1995**, includes all the concepts mentioned above, and has further expanded on them, and added some new concepts.]

4. Registration

(1) Where not less than ten individuals each being a member of a different family intend to form a cooperative society, or two or more cooperative societies registered under this section wish to form into a federation, or a society registered under section 7 of the Andhra Pradesh Cooperative Societies **Act**, 1964 intends to convert itself into a cooperative society under this **Act**, they shall frame byelaws for this purpose in accordance with section 3 in the first instance.

[Comment: The **1995 Act** could have provided for any cooperative under the 1964 **Act** to be deemed to be registered under the new **Act**, if it had no government share capital or loan or guarantee. Automatically, all

savings and credit cooperatives, and several other cooperatives would have come under the purview of the new **Act**.

However, since the Preamble makes it clear that registration under the new **Act** has to be the result of the will of the members of a cooperative, and that registration under the new **Act** comes with accountability and competitive spirit, the new **Act** leaves it to each

cooperative under the old **Act** to choose to remain under the old **Act**, or to shift to the new one.]

(2) Thereafter an application for registration shall be submitted to the Registrar by hand or by registered post.

(3) Every such application shall be accompanied by

(a) the original and one copy of the byelaws of the proposed cooperative society as adopted by the individuals or delegates of cooperative societies who wish to form into a cooperative society under this **Act** or by the general body of a society registered under the Andhra Pradesh Cooperative Societies **Act**, 1964 which wishes to convert itself into a cooperative society under this **Act**;

(b) a list of names of individuals or cooperatives who wish to form into a cooperative society under this **Act** or of the members of the committee of the society registered under the Andhra Pradesh Cooperative Societies **Act**, 1964 which intends to convert itself into a cooperative society under this **Act** with their addresses, occupations and their financial commitments to the proposed cooperative society;

(c) a true copy of the minutes of the meeting at which the byelaws were adopted, duly signed by atleast a majority of individuals or delegates present at the meeting where the byelaws were adopted, or by a majority of the members of the committee of the cooperative concerned where a society registered under the Andhra Pradesh Cooperative Societies **Act**, 1964, intends to convert itself into a cooperative society under this **Act**;

(d) registration fee amounting to one percent of the total authorised share capital by whatever name called subject to a minimum of one hundred rupees and a maximum of ten thousand rupees; and

(e) in the case of a society registered under section 7 of the Andhra Pradesh Cooperative Societies **Act**, 1964 and wishing to convert itself into a cooperative society under this **Act**, evidence to show that the society is not in possession of any share capital from

Government, and evidence also to show that the society is not in receipt of any government loans or guarantees at the time of applying for registration as a cooperative society under this **Act**, or that it has entered into a memorandum of understanding with the Government for any such outstanding loans or guarantees.

[Comment: The procedure for a new registration and for conversion from the old **Act** to the new one is provided for in section 4. Some doubts have arisen on whether the new **Act** can lay the procedure for conversion from the old **Act**, or whether it is necessary for the old **Act** to have some provisions in this regard. It must be noted that both the Acts were passed by the Andhra Pradesh Legislature. The **1995 Act** was the later **Act**.

The Legislature was fully conscious of the continuance of the old **Act**, even as it was ushering in the new **Act**. It chose to determine the procedure for conversion only in the new **Act**, and as such, newly forming cooperatives as well as cooperatives which are under the 1964 **Act** need to follow the provisions of section 4 of the new **Act** to come under the purview of the **1995 Act**.

In particular it must be noted that the use of the term “conversion” in the 1964 **Act** is quite different to its use in the **1995 Act**. In the 1964 **Act** it is used in the context of a change in the objectives of a cooperative, and, therefore, a possible change in membership interests in the cooperative. In the **1995 Act**, the term is used merely for change in registration from the old **Act** to the new one, objectives, membership, etc, all remaining the same, and the general body choosing greater freedom accompanied by greater responsibility for their cooperative through “converting” to the **1995 Act**. As such, the provisions relating to conversion under the 1964 **Act** are not relevant for conversion to the new **Act**.]

4. The Registrar shall, if he is satisfied that
 - (a) the application is in conformity with the requirements of this **Act**;
 - (b) the proposed byelaws are not contrary to the provisions of this **Act**; and
 - (c) the name of the proposed cooperative society is not the same as that of a cooperative society already registered under this section, or the same as that used by a class of societies already registered under section 7 of the Andhra Pradesh Cooperative Societies **Act**, 1964,

register the cooperative society and also its byelaws and communicate by registered post a certificate of registration and the original of the registered byelaws signed and sealed by him, within a period of sixty days from the date of submission of application, to the chief promoter mentioned in the application.

[Comment: Under most state cooperative laws, since cooperatives are seen as instruments of government policy, and as channels for distribution of scarce government resources, the registering authority has the power to refuse to register a cooperative on the grounds that it might not be financially viable, or that its existence was likely to affect the viability of another cooperative already in existence. Under the **1995 Act**, since cooperatives are seen as agents of their members, the registering authority has not been given any discretion in refusing registration. Time limits have been fixed for registration or refusal to register to be communicated to the applicants.

The Registrar has only to ensure that the provisions of the **Act** have been adhered to by the applicants for registration, and that the name they have proposed for their cooperative is not already in use by another. The right to freedom of association, guaranteed by the Constitution of India, is respected and provided with the necessary legal framework, where those associating desire such a legal framework for their association.

Most other forms of organisations, such as, companies, or societies, are not required to declare their "area of operation". This concept of area of operation was introduced in mid-60s in cooperative laws in the country, to ensure that there was no "overlapping or conflict of jurisdiction" between cooperatives. The very use of the term "jurisdiction" in relation to a cooperative spoke volumes of the perception of cooperatives as arms of the government. The **1995 Act** avoids the use of the terms "area of operation", and "jurisdiction" in relation to the functioning of cooperatives. In order to identify which registering authority, or which tribunal has jurisdiction over which area, the State Government has clarified that the registering authority and tribunal in the case of any cooperative will be those who have jurisdiction for the location at which the headquarters of a cooperative is situated.]

(5) If the conditions laid down in sub-section (4) are not fulfilled, the Registrar shall communicate by registered post the order of refusal together with the reasons therefor, within sixty days from the date of submission of application, to the chief promoter.

(6) There shall be appointed a Registrar of Mutually Aided Cooperative Societies for the State and as many other officers as the Government think fit for the purposes of this **Act**.

[Comment: The law makers, in their wisdom, have chosen to provide for a separate Registrar of Mutually Aided Cooperative Societies. It would be best, therefore, if the intent behind this provision is to be respected, that a person distinct from the Registrar appointed under the 1964 **Act** were appointed as Registrar under the **1995 Act**.]

5. Registration certificate

Where a cooperative society is registered, the certificate of registration signed and sealed by the Registrar shall be conclusive evidence that the cooperative society mentioned therein, is a mutually aided cooperative society duly registered under this **Act**;

Provided that where a society was earlier registered under the Andhra Pradesh Cooperative Societies **Act**, 1964, such registration shall stand cancelled once a certificate of registration under this section is issued.

[Comment: Where a cooperative registered under the 1964 **Act** obtains its registration certificate under the **1995 Act**, its old registration stands cancelled. A somewhat similar provision is available under the Multi-State Cooperative Societies **Act**, which is applicable to cooperatives whose membership is drawn from more than one state. If a cooperative registered under a state law chooses to extend its membership beyond the boundaries of the state, then it needs to amend its byelaws, and send the proposal for registration of amendment, not to the State Registrar, but to the Central Registrar. When such an amendment is registered by the Central Registrar, he/she also issues a certificate to the effect that the cooperative is now registered as a multi-state cooperative, and that the Multi-State Cooperative Societies **Act** is now applicable to it, which means that the state law is no longer applicable to it, and that it ceases to be a cooperative under the state law.]

6. Society to be a body corporate

(1) A cooperative society registered under this **Act** shall be a body corporate by the name under which it is registered having perpetual succession and a common seal. The cooperative society shall be entitled to acquire, hold and dispose of property, to enter into contracts, to sue and be sued and to do all other things necessary to achieve its objectives.

(2) All transactions entered into in good faith prior to registration, in furtherance of the objectives of the cooperative society, shall be deemed to be transactions of the cooperative society after its registration.

7. Registration with limited or unlimited liability

A cooperative society may be registered with limited or unlimited liability. Where the liability is limited, it shall have as a suffix to its name the expression "limited" or its equivalent in any Indian language.

[Comment: Both the 1964 and the 1995 Acts provide for cooperatives to be registered with limited or unlimited liability. The 1964 Act, however, requires federations to be registered only with limited liability. In practice, under the 1995 Act, since cooperatives have to recover/recoup deficit (loss), if any, on an annual basis, from reserves or members' accounts, the liability of the members in the event of dissolution, is limited in fact to meeting the shortfall in assets in the last year of functioning.]

8. Display of name

(1) Every cooperative society shall display its full name, registration number and the address of its registered office in legible characters in a conspicuous position

(a) at every office or place at which it carries on business;

(b) in all notices and other official publications;

(c) on all its contracts, business letters, orders for goods, invoices, statements of account, receipts and letters of credit; and

(d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.

(2) Where a cooperative society has a corporate seal, it shall display its full name in legible characters on its corporate seal.

9. Byelaws

(1) Except on such specific matters for which this Act has provided, the functioning of every cooperative society shall be regulated by its byelaws. Subject to the provisions of this Act and the byelaws every cooperative society shall have regard to the cooperative principles in its functioning.

(2) Subject to section 3, the byelaws of a cooperative society shall be specific on the following matters, namely,

(i) the name and address of the cooperative society;

(ii) the object of the cooperative society explicitly stated as a common

central need of the members which the cooperative society aims at fulfilling;

(iii) eligibility, ineligibility and procedure for obtaining and retaining membership;

(iv) procedure for withdrawal, cessation and termination of membership;

(v) the services that it intends to give its members;

(vi) fixation of minimum performance expected annually of each member vis-a-vis use of services, financial commitment and participation in meetings, in order to be eligible to exercise the rights of membership including the right to vote;

(vii) the consequences of performing below the minimum level fixed;

(viii) the consequences of default in payment of any sum due by a member;

(ix) rights of members;

(x) the nature and extent of the liability of the members for the debts contracted by the cooperative society;

(xi) the manner of making or amending byelaws;

(xii) the powers and functions of the general body, and the powers and functions and the manner of constitution of representative general body, if any, and subjects which must be dealt with by the general body, and by the representative general body, if any;

(xiii) the manner and frequency of convening general meetings and quorum required;

(xiv) the manner of conducting elections and of filling casual vacancies;

(xv) the size and composition of the board of directors;

(xvi) the term of office of the directors;

(xvii) the manner of removal of directors;

(xviii) the manner and frequency of convening board meetings and quorum;

(xix) the powers and duties of the board;

(xx) the powers and duties of the chairperson;

- (xxi) the terms on which the cooperative society may deal with non-members;
- (xxii) eligibility, ineligibility for becoming and continuing as director;
- (xxiii) penalties for acting against the interests of the cooperative society and for non-fulfilment of duties by members, office-bearers, directors or staff;
- (xxiv) the nature and extent of the liability of office-bearers, directors for debts contracted by the cooperative society;
- (xxv) the authorisation of an officer or officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the cooperative society;
- (xxvi) the manner of choosing delegates to higher tier cooperative federations;
- (xxvii) the rights, if any, which the cooperative society intends to confer on any cooperative society or other federation and the circumstances under which these rights may be exercised by the society or federation;
- (xxviii) the nature and amount of capital, if any, of the cooperative society;
- (xxix) the maximum capital which a single member can hold;
- (xxx) the maximum interest payable to members on paid up share capital;
- (xxxi) the sources, types and extent of funds to be raised by the cooperative society;
- (xxxii) the purposes for which the funds may be applied;
- (xxxiii) the constitution of various funds and their purposes;
- (xxxiv) the manner of appointment of auditors and their powers and functions;
- (xxxv) the manner of appointment of internal auditors and their powers and functions;
- (xxxvi) the manner of disposal of funds when the cooperative society is under liquidation; and
- (xxxvii) the manner of dissolution of the cooperative society.

[Comment: In keeping with the spirit of liberalisation, the **1995 Act** does not give the Government the power to make Rules. A cooperative under this **Act** is guided by the provisions in the **Act** (including the cooperative principles), its

byelaws, and any understanding or contract that it enters into with various parties including the Government.

The above section, therefore, requires cooperatives to think through a long list of provisions for inclusion in their byelaws. Keeping in mind other provisions in the **Act**, the byelaws may additionally include the financial year which the cooperative wishes to adopt, and also provide for the internal dispute settlement mechanism.

Model byelaws have not been provided for, as uniformity and standardisation are anathema to owning of responsibility for one's enterprise. In fact, this **Act** does not provide for the classification of cooperatives, and every group of cooperators is free to design its cooperative with such objectives, such activities, and such financial and management structure as appear appropriate to it. Potential cooperators are expected to think through issues and have byelaws of their choice, so that they can take full responsibility for the success or failure of their cooperative.]

10. Amendment of byelaws

(1) A cooperative society may amend any of the provisions of its byelaws by a resolution of its general body, or of its representative general body, where this exists;

Provided, that no such resolution shall be passed unless at least twenty clear days of written notice of the meeting has been given along with a copy of the proposed amendment to each member of the general body or representative general body, as the case may be, and such notice and proposed amendment is also displayed on the notice board of the cooperative society for a period of twenty days immediately preceding the date of the meeting;

Provided further that the representative general body shall not alter any provision in the byelaws relating to its own constitution and powers.

(2) In the case of amendment of its byelaws with regard to matters relating to items (i), (ii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), (xxiv), (xxix), (xxxvi) and (xxxvii) of sub-section (2) of section 9, an application for the registration of the amendment shall be forwarded by the cooperative society by registered post to the Registrar within a period of thirty days from the date of the resolution.

(3) Every application forwarded to the Registrar shall be signed by the chairperson and shall be accompanied by a copy of the resolution adopting the amendment and the following particulars, namely,

(a) the date of the meeting at which the amendment was approved;

(b) the total number of members on the rolls of the cooperative society who were eligible to vote on the date of such meeting, the number present at the meeting and the number of eligible members who voted for the resolution.

(4) If the proposed amendment is in consonance with the provisions of this **Act**, the Registrar shall register the proposed amendment within a period of sixty days from the date of receipt of the application.

(5) The Registrar shall forward by registered post to the cooperative society within a period of fifteen days after registration a copy of the registered amendment together with a certificate signed and sealed by him and such certificate shall be conclusive evidence that the amendment has been duly registered.

(6) If the proposed amendment is not in consonance with the provisions of this **Act**, the Registrar shall refuse, within a period of sixty days from the date of receipt of the application, to register the proposed amendment;

Provided that no order refusing to register the amendment shall be passed except after giving the cooperative society an opportunity of making its representation.

(7) The Registrar shall forward by registered post to the cooperative society, within a period of fifteen days after refusal, the order of refusal together with the reasons therefor.

(8) Where no order of refusal is received by the cooperative society under sub-section (7) within a period of seventy five days from the date of submission of application, it shall be deemed that the Registrar has registered the amendment on the last date of the period specified in that sub-section.

(9) In the case of all amendments to the byelaws other than those specified in sub-section (2), information about the amendment shall be forwarded by the cooperative society by registered post, with the enclosures and particulars specified in sub-section (3), to the Registrar within a period of thirty days from the date of the general meeting at which the resolution was passed, and the Registrar shall immediately take on file such amendment;

Provided, that such action shall not in any way preclude the Registrar from proceeding against the cooperative society or its management, where such amendment is found to be contrary to the provisions of this **Act**.

(10) An amendment to the byelaws under sub-section (9) shall come into effect only after registration or on the thirtieth day from the date the amendment has been sent to the Registrar for taking on record, as the case may be.

[Comment: Most cooperative laws provide for the compulsory amendment of the byelaws of a cooperative by the Registrar. The **1995 Act** does not provide for such compulsory amendment. Cooperative laws across the country also require the registration of every amendment to the byelaws, even though laws relating to the registration of societies or to companies do not expect any amendment to be registered. The **1995 Act** has categorised the provisions in the byelaws into two parts. Amendments to those provisions which it considers to be of strategic interest to members, it requires registration of. Amendments to all other provisions of the byelaws are to be sent to the Registrar only for taking on record. A lot of unnecessary wastage of time between the taking of a view by a general body, and the coming into force of that view has now been avoided, as a result of these provisions.]

11. Change of liability, transfer of assets and liabilities, division, amalgamation

(1) A cooperative society may, by a resolution of its general body,

(a) decide to amend its byelaws to change the form or the extent of its liability;

(b) decide to transfer its assets and liabilities, in whole or in part, to any other cooperative society which agrees to such transfer by a resolution of its general body;

(c) divide itself into two or more cooperative societies.

(2) Any two or more cooperative societies may, by a resolution of their respective general bodies, decide to amalgamate themselves and form a new cooperative society.

(3) Every resolution of a cooperative society under this section shall be passed at its general meeting by a majority of total members with right of vote or two thirds of members present and voting whichever is less and such resolution shall contain all particulars of the liability, transfer, division, amalgamation as the case may be.

(4) Before passing a resolution under this section, the cooperative society shall give notice thereof together with a copy of the resolution to all its members and federations to which it is affiliated, and creditors who may give their consent. Notwithstanding any byelaw or contract to the contrary, any member, federation, or creditor not consenting to the resolution shall, during a period of one month from the date of service of the notice have the option of withdrawing their shares, deposits, loans or services as the case may be.

(5) Any member, federation, or creditor who or which does not exercise within the specified period the right under sub-section (4) shall be deemed to have consented to the resolution.

(6) A resolution passed by a cooperative society under this section shall not take effect until

(a) (i) the members, federations, and creditors have consented or are deemed to have consented to the resolution under sub-section (4) or, as the case may be, sub-section (5); or

(ii) all claims of the members, federations, and creditors who have exercised the option referred to under sub-section (5) within the period specified therein have been met in full or otherwise satisfied; and

(b) (i) in the case of change of liability, amendment of the byelaws of the cooperative society concerned is registered or is deemed to have been registered; or

(ii) in the case of division or amalgamation, certificate of registration of the cooperative society or societies is issued.

(7) When a resolution passed by a cooperative society under sub-section (2) takes effect the resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

(8) The registration of a cooperative society shall stand cancelled and the cooperative society shall be deemed to have been dissolved and shall cease to exist as a corporate body

(a) when the whole of the assets and liabilities of such cooperative society are transferred to another cooperative society; or

(b) when such cooperative society divides itself into two or more cooperative societies.

(9) Where two or more cooperative societies are amalgamated to form a new cooperative society, the registration of the cooperative societies so amalgamated shall stand cancelled and they shall be deemed to have been dissolved and shall cease to exist as corporate bodies.

[Comment: Under the 1964 **Act**, havoc has been played in cooperatives by reorganisation through compulsory amalgamation/division/merger/liquidation/transfer of “area” by the Registrar, with or without the consent of members. The new **Act** does not provide for any such role for the Registrar. Most cooperative laws also require the prior approval of the Registrar for any proposal by a cooperative for amalgamation/division/etc.

The **1995 Act** recognises that vibrant cooperatives may choose to change their structure with changing opportunities. It, therefore, simplifies the procedure for amalgamation, division, etc and leaves all these matters to the will of the members as expressed at their general body meetings, providing for due procedure.]

12. Promotion of subsidiary organisation

(1) Any cooperative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary organisations for the furtherance of its stated objectives, and such organisations may be registered under any law for the time being in force, as agreed to by the general body.

(2) The annual reports and accounts of any such subsidiary organisation shall be placed before the general meeting of the promoting cooperative society every year.

(3) Any subsidiary organisation created under sub-section (1) shall exist for only as long as the general body of the cooperative society deems its existence necessary.

[Comment: Cooperatives sometimes set up educational institutions, research institutions, and even associated businesses. These may need independent structures and management, and may even require to have body corporate status, distinct from the parental body.

For such needs, this section has provided for the setting up of subsidiary organisations under various laws. Such a subsidiary is expected to further the objectives of the cooperative, and, therefore, the **Act** provides for it to be accountable to the general body of the cooperative, and to exist only at its pleasure.]

13. Creation of new organisation with others

Where the collaboration between a cooperative society and any other organisation or organisations requires the creation of a new organisation, the new organisation may be registered as a company or a public society, as appropriate for the fulfilment of the objective with which it was created, and such collaboration shall be reviewed every year by the general body of the cooperative society.

[Comment: Under section 4(1), the setting up of cooperatives by cooperatives has already been provided for. Under this section, the setting up of other forms of organisation by cooperatives has been envisaged. For example, if a cooperative cannot by itself set up an educational institution or research station, or a bank, using section 12, it might consider doing that in collaboration with other cooperatives, under section 13. Such an organisation, set up by two or more cooperatives, if also a cooperative, would be established under section 4. Otherwise, it would be registered under the appropriate law.]

14. Mobilisation of funds

(1) A cooperative society may mobilise funds in the shape of share capital, deposits, debentures, loans and other contributions from its members to such extent and under such conditions as may be permissible under the byelaws of the cooperative society;

Provided that, at the time of dissolution of a cooperative society, the amounts due to the members shall be settled only after the settlement of dues to others.

(2) A cooperative society may also mobilise funds in the shape of deposits, debentures, loans and other contributions from other individuals and institutions, to such extent and under such conditions as may be permissible under the byelaws;

Provided that a cooperative society shall not accept share capital from the Government but may accept other funds or guarantee from the Government on such terms and conditions as are mutually agreed upon through a memorandum of understanding.

[Comment: This **Act** is called the Mutually Aided Cooperative Societies **Act**. By terming cooperatives under this **Act** “mutually aided”, the Legislative Assembly did not intend that cooperatives under this **Act** would be financially self-sufficient. It did expect that the foundation for cooperatives would be mutual aid, in terms of finance, and also in terms of spirit, discussion, discourse.

Therefore, the **Act** requires cooperatives to raise share capital from members only, and expects only such persons to be members who need the services of

the cooperative and can use it. The **Act** also permits cooperatives to raise other funds from members, making it clear that any amounts raised from members, in any form, will be settled at the time of dissolution, only after all other external accounts have been settled.

This section also provides for cooperatives to raise funds in all forms other than share capital from non-member individuals and institutions, and to raise financial support in the shape of loans and guarantee from the Government, based on a mutually negotiated contract. This is a clear shift from the 1964 **Act** and other cooperative laws which incorporate in the law itself several rights and privileges for the Government and/or the Registrar vis-À-vis cooperatives, regardless of the financial support provided by the Government.

This **Act** foresees situations where a cooperative and the Government may wish to collaborate on issues of mutual interest, and, therefore, requires that they sort out between themselves the terms on which such collaboration should take place.]

15. Investment of funds outside the business

A cooperative society may invest or deposit its funds in any non-speculative manner outside its business.

[Comment: Cooperatives are businesses which come into existence not because their members have money to invest, and not because they want a return on that investment, but because their members have some common economic need which they cannot fulfil individually by themselves, but which they can through joint enterprise and effort. Since cooperatives come into existence to fulfil needs which are not being fulfilled by investment driven enterprises, therefore, most cooperative laws have debarred cooperatives from speculative investment.

Sadly, however, most cooperative laws, and in particular Rules framed under Cooperative Acts, have taken this concept to absurd limits, requiring cooperatives to seek the Registrar's permission before depositing their funds in any commercial bank, or in any cooperative, or even before investing in their own business! The **1995 Act** concentrates on the essentials, and simply prohibits cooperatives from investing their funds in any speculative manner. The rest it leaves to their good sense and internal regulations.]

16. Disposal of surplus

(1) In any year a cooperative society shall allocate towards a deficit cover fund, reserve funds, deferred payment to members as patronage rebate in proportion to their use of the cooperative society's services, and payment on share capital of interest not exceeding the rate of interest paid by scheduled banks, such percentages of the surplus arising from its

business transactions in the previous year, as may be approved by the general body.

(2) Reserves created under sub-section (1) shall be costed by crediting an annual interest equal to the rate paid by scheduled banks on fixed deposits.

[Comment: Other cooperative laws define quite rigidly the amounts to be set aside from surplus (profit) each year, towards various funds and reserves. This law appreciates that each cooperative will have different uses for the surpluses generated, and that each of these uses will change from time to time in the same cooperative. For example, in a nascent cooperative, members may prefer to capitalise to enable expansion or absorb future losses, whereas in a well established cooperative, members may expect more by way of rebate on their patronage of the cooperative's services. The **1995 Act** leaves the disposal of surplus to the general body.]

Section 16 also requires that reserves be costed each year, and not be treated as cost-free funds. The implications of this are (1) that surplus will be arrived at after costing the reserves; (2) that surplus, if any, will have arisen out of the year's transactions, and not be the interest earned/due on the reserves; and (3) as a result, members who join when a cooperative is well established, will not automatically benefit from surpluses generated out of reserves created in the early years by those members.]

17. Management of deficit

(1) Where a cooperative society is left with a deficit in any given year, the board of directors shall place before the general body in the first following annual general meeting, a detailed report on the causes of deficit and the manner in which the deficit is proposed to be met.

(2) The general body of the cooperative society shall decide to have the deficit covered by setting it off against the amount available in the deficit cover fund, and/or by debiting the deficit to the account of the members in proportion to the services they had availed or were expected to avail of the cooperative society during the year.

[Comment: Having provided for full autonomy to cooperatives under the new **Act**, the **Act** also ensures that management is accountable to members. Deficit (loss) is to be discussed at the general body, with the board of directors placing a report before the general body on the causes of the deficit, and on how it is proposed to be covered.]

The deficit of any year is to be dealt with in the succeeding year, and so the spectacle of a cooperative having accumulated losses is not provided for. Since

members have the right to decide who they wish to have as their directors, and to recall them if necessary, and since surplus is available for distribution among members, therefore, deficit, too, is for sharing by members, to the extent that it cannot be set off against reserves available for this purpose.

In the event of a cooperative registered under the 1964 **Act** with accumulated losses wishing to register under this **Act**, this section would imply that the general body of the cooperative set off the losses against reserves, or debit the losses to members' accounts, when resolving to convert to the new **Act**.]

18. Reserve fund

A cooperative society may create a reserve for such purpose as may be specified in the byelaws.

19. Eligibility for membership

(1) Subject to the byelaws, any person who is desirous of utilising the services of the cooperative society may express his willingness to accept the responsibilities of membership and fulfil such other conditions as may be specified in the byelaws of the cooperative society and thereupon he may be admitted as a member, subject however to the condition that the cooperative society is in a position to extend its services to the applicant and that the applicant is not already a member of a cooperative society registered under this **Act**, or the Andhra Pradesh Cooperative Societies **Act**, 1964 providing the same or similar services.

(2) Admission of members and removal from membership shall be made in accordance with the procedure specified in the byelaws, only by an elected board or by the general body where such an elected board does not exist for the time being.

(3) A person admitted as a member may exercise the rights of membership, including the right to vote, only on fulfilment of such conditions as may be laid down from time to time in the byelaws;

Provided that a person shall have been a member for at least one year before being eligible to exercise the right of vote;

Provided further that the above proviso shall not apply to the promoter members in the first year of registration of a cooperative society.

[Comment: In many cooperatives under most cooperative laws, membership is very heterogeneous, with a majority having very low financial or other stake in the organisation. The result is that a majority of the decisions are made by those whose interest in the cooperative is superficial or suspect or insignificant.

The **1995 Act** ensures that membership is open only to those who need the services of the cooperative, can use them, and are willing to be responsible. In particular, it is important to note that section 9(2)(vi) and (vii) require the byelaws to fix some minimum performance standards for members to reach in order that they exercise their rights.

Election-eve enrolment of bogus members is addressed by requiring that members vote only after a year of membership and on fulfilment of other obligations to the cooperative.

The **Act** does not expect a person to be a member of more than one cooperative for the same services. Section 19 also makes a clear shift from earlier laws which expected cooperatives to admit members whether or not they were in a position to serve them. The **1995 Act** does not expect every cooperative to be the panacea for all problems facing an entire population in an area, and leaves it to the members to decide how big they wish to grow, and how much they can handle.]

20. General body

(1) Subject to the provisions of this **Act** and the byelaws, the ultimate authority of a cooperative society shall vest in its general body;

Provided that where, because of spread of number of members, a cooperative society feels the need for constituting a representative general body for more effective decision making, it may constitute a representative general body in such a manner and with such functions as may be specified in the byelaws.

(2) The following matters, among others specified in the byelaws shall be dealt with by the general body of a cooperative society, namely,

- (a) amendments to byelaws;
- (b) election and removal of directors;
- (c) consideration of,
 - (i) the long term perspective plan and budget;
 - (ii) the annual operational plan and budget;
 - (iii) the annual report of activities for being filed with the Registrar;
 - (iv) the auditor's report and the annual audited statement of accounts for being filed with the Registrar;

- (v) special audit report or inquiry report, if any;
- (vi) compliance report relating to audit, special audit and/or inquiry, if any;
- (d) approval of appointment and removal of auditors;
- (e) disposal of surplus;
- (f) management of deficit;
- (g) creation of specific reserves and other funds;
- (h) review of actual utilisation of reserves and other funds;
- (i) review of the chief executive's report on the attendance at meetings by directors and review of the business done with the cooperative society by the directors;
- (j) appointment, reconstitution and disbanding of the representative general body;
- (k) remuneration payable to any director or internal auditor in connection with his duties in that capacity or his attendance at related meetings;
- (l) membership of the cooperative society in federation;
- (m) collaboration with other organisations and its review;
- (n) promotion of subsidiary organisations and review;
- (o) dissolution of the cooperative society; and
- (p) all other functions expected of the general body under the other provisions of this **Act**.

[Comment: The functions of the general body in the **1995 Act** are similar to those of the general body in other cooperative laws. There are, however, a few very important distinctions. The first is that the **1995 Act** expects the general body to approve the appointment or removal of auditors. This is the sole prerogative of the Registrar in other cooperative laws! The second is that election and removal of directors is the function of the general body, doing away with the elaborate procedure laid down by other cooperative laws to be followed in cooperative elections as is done for General Elections. The third is the review of the performance of directors by the general body, vis-à-vis their attendance at meetings, and

their transactions with the cooperative, not provided for by most other cooperative laws. The last is the provision for setting up a representative general body, provided for in most other Acts, too, but undermined by corresponding Rules.]

21. Board of directors

(1) There shall be a board of directors for every cooperative society constituted and entrusted with the direction of the affairs of the cooperative society in accordance with the provisions of the **Act** and the byelaws.

(2) The size of the board shall be a multiple of the term of office of its directors.

(3) The directors of the board shall have staggered terms such that at any point of time the vacancies, arising as a result of the terms of directors coming to an end, are less than one half of the total strength of the board;

Provided that the term of a director shall not exceed five years;

Provided further that at the first election all the directors shall be elected at once, and their terms staggered by drawal of lots specifying different terms.

(4) In addition to such criteria as may be specified in the byelaws, a person shall be ineligible for being chosen as a director if such person

(a) has at any time lost the right to vote as a member or to continue as one as specified in the byelaws;

(b) incurs any other disqualification specified in the byelaws.

(5) In addition to such criteria as may be specified in the byelaws, a person shall cease to be a director if he incurs any of the disqualifications specified in sub-section (4) or,

(a) absents himself from three consecutive board meetings without leave of absence;

(b) absents himself from general body meeting without leave of absence;

(c) is penalised under this **Act**.

(6) In addition to such criteria as may be specified in the byelaws, the directors of the board shall incur disqualification for a period of three years

for being chosen as directors and shall be ineligible to continue as directors of any cooperative society if, during their term as directors of a cooperative society,

(a) they did not conduct elections within the time specified in the byelaws and before the expiry of the terms;

(b) they did not conduct their annual general body meeting within six months of closure of the cooperative accounting year, or a requisitioned meeting of the general body within the specified time;

(c) they did not place the audited accounts for the preceding financial year along with the report of the auditors before the general body at its annual general meeting.

(7) In order to be eligible for being chosen as director of the board of a cooperative society which has been in existence for more than two years a member

(a) shall have been a voting member of the cooperative society for at least two years immediately preceding the year of election;

(b) shall have attended the two general body meetings of the cooperative society held immediately preceding the elections.

(8) Every director and employee of a cooperative society while exercising his powers and discharging his duties shall, —

(a) **act** honestly and in good faith and in the best interests of the cooperative society; and

(b) exercise such due care, diligence and skill as a reasonably prudent person would exercise in similar circumstances.

(9) A director or employee who is guilty of misappropriation, breach of trust or any other omission or commission, resulting in loss to the cooperative society as a result thereof, shall be personally liable to make good that loss, without prejudice to such criminal action to which he is liable under the law.

[Comment: The **1995 Act** requires every cooperative to have an elected board of directors, whose members have staggered terms in office. The **1995 Act** has sought, through this provision, to prevent to the extent possible, any vacuum in management, which has been used in the past under the 1964 **Act**, to bring in the dreaded “Person-in-Charge” for the interregnum. By having less than half the directors retiring at any time, the **1995 Act** has tried to ensure that there is always a quorum, and a democratically elected body is in position.

Nominations to the board are not provided for, and caste/class/gender based reservations on the board, too, have not been provided for. Since membership is voluntary, and since multiple cooperatives can be set up for the same purpose in the same area, and since cooperatives are autonomous and private organisations, however poor or large their membership, the **1995 Act** has left the matter of reservation to the decision of the members. It may be worth noting that, in practice, there are cooperatives registered under the new **Act** which have chosen to have such reservations on their boards, but even more important, there are any numbers of cooperatives under the new law exclusively of the disadvantaged groups, especially of poor women, and obviously their entire boards are made of up people of the same category, who would otherwise have merely had token representation on the board.

The **Act** requires high standards of the directors, including their presence in meetings, their performance as members of the cooperative, timely conduct of elections by them, timely conduct of general meetings, timely reporting to the general body, timely audit, and so on. Directors are also required to make good any loss to the cooperative arising out of their questionable action/inaction, without prejudice to any criminal action that could be taken against them.]

22. Powers and functions of the board of directors

- (1) The board shall, in accordance with the byelaws, be the authority to
 - (a) admit and terminate membership;
 - (b) elect the chairperson and other office bearers;
 - (c) remove from office the chairperson and other office bearers;
 - (d) appoint and remove the chief executive;
 - (e) fix staff strength;
 - (f) frame policies concerning
 - (i) organisation and provision of services to members;
 - (ii) recruitment and conditions of service of the staff at the cooperative society;
 - (iii) mode of custody and investment of funds;
 - (iv) manner of keeping accounts;
 - (v) mobilisation, utilisation and investment of various funds;

- (vi) monitoring and management information systems including statutory returns to be filed; and
- (vii) such other subjects and matters necessary for the effective performance of the cooperative society;
- (g) place the annual report, annual financial statements, annual plan and budget for the approval of the general body;
- (h) consider audit and compliance reports and place these before the general body;
- (i) review membership in other cooperatives; and
- (j) undertake such other functions as may be delegated by the general body.

(2) The chairperson shall be elected by the board from among the elected members and shall, in accordance with the byelaws,

- (a) preside at meetings of the board and the general body;
- (b) have only a casting vote in the event of equality of votes on any matters being decided upon by the board;
- (c) exercise such other powers as may be delegated by the board and specified in the policies framed or resolutions adopted by the board.

[Comment: The elected board has been given the powers to admit members, to elect the chairperson and other office bearers, to frame business policies, personnel policies, financial policies, and to be responsible for all such matters which the board of directors of any business would normally be responsible for, but which boards under most cooperative laws are not responsible for.]

The chairperson, too, is seen not as a contentious person desiring to thrust his viewpoint on his/her colleagues, but as a mature person who leads a team, casting his/her vote only in the eventuality of a matter being put to vote and the other directors voting equally in favour and against the motion.]

23. Elections

- (1) The conduct of election of directors of a cooperative society shall be the responsibility of the incumbent board of the cooperative society.
- (2) Elections shall be conducted before the expiry of the term of office of the outgoing directors in the manner specified in the byelaws.

(3) Where a board does not take necessary steps to conduct elections as specified in the byelaws before the expiry of the term of the directors, or where there are no directors remaining on the board, the Registrar shall, at the request of not less than twenty-five members or five per cent of the total members of the cooperative society whichever is less or may suo moto, convene within 30 days a general meeting for appointing an ad-hoc board for the specific purpose of conducting elections.

(4) The term of the ad-hoc board appointed under sub-section (3) shall not exceed one month over and above the minimum period required under the byelaws to conduct elections, and the ad-hoc board shall cease to function as soon as a regular board is elected in accordance with the byelaws.

(5) The directors shall hold office for the period for which they are elected and the newly elected directors shall assume office at the end of this period.

(6) The directors may be eligible, for re-election, if the byelaws so provide.

[Comment: Elections used to be the responsibility of incumbent boards till mid-60s, and since then through a series of amendments in cooperative laws across the country, elections became the responsibility of the Registrar of Cooperatives. Through Rules, again stepping beyond the intent and content of the **Act**, the Government acquired for itself the right to postpone elections indefinitely. The **1995 Act** once again makes the conduct of elections an internal responsibility, providing space for limited external intervention only if this responsibility cannot be fulfilled.

Directors cannot be re-elected for a second term, unless the byelaws provide for such re-election. That is, the **1995 Act** expects the members to apply their minds to the advantages and disadvantages of leadership development and spread vs continuity in leadership, and to arrive at a decision they feel appropriate in their circumstances.]

24. Meetings

(1) The byelaws of a cooperative society shall specify the frequency of and manner in which board and general body meetings shall be held, so however the board shall meet at least once in every three months and the general body shall meet at least once a year.

(2) The board shall convene a general meeting within thirty days of receipt of a requisition for convening a meeting signed by at least one-tenth of members of the cooperative society or as provided in the byelaws and any such requisition shall contain the proposed agenda and the reasons why the meeting is felt necessary.

(3) Where the board fails to convene the annual or requisitioned general meeting within due time, it shall be competent for the Registrar to convene the requisitioned or annual general meeting, as the case may be.

(4) Every cooperative society shall record in the minutes book, minutes of all proceedings of every general meeting and of every meeting of its board of directors.

(5) Such minutes shall be communicated to all persons invited for the meeting within thirty days of the conclusion of the meeting.

(6) The minutes so recorded shall be signed by the person who chaired the said meeting.

[Comment: The Registrar has been given the right to convene a requisitioned general body meeting, where a board fails to do so. This section also requires every cooperative to record in the minutes book, the proceedings of all board and general meetings, and to send copies of these minutes to all those who were invited to such meeting. No other cooperative law requires the minutes to be communicated, and as a result, the minutes are either non-existent, or a closely guarded secret. The **1995 Act** aims at greater transparency in the cooperative, which is essential if it is to be accountable.]

25. Staff

All staff of the cooperative society shall be the employees of the cooperative society and shall be fully accountable to the cooperative society and be appointed, removed and function in accordance with such service conditions as may be framed by the board;

Provided that a cooperative society may take personnel on deputation from other agencies including the Government, on such terms as are mutually agreed upon.

[Comment: Most cooperative laws, including the 1964 **Act**, have provided for a major role for the Registrar in setting qualifications, in recruitment, in framing service conditions, in taking disciplinary action, etc relating to staff of cooperatives. Common cadres of staff, too, have been set up for certain types of cooperatives. As a result, staff of cooperatives, who are, more often than not, more privileged in society than most members, do not feel accountable to the cooperatives that they work with. The **1995 Act** makes it clear that the staff is employed by the cooperative and is accountable to the cooperative. This should help the new generation cooperatives have more responsible employer-employee relationships.]

26. Accounts and records

1. Every cooperative society shall keep at its office, the following accounts, records and documents, namely:
 - (a) a copy of this **Act** with upto date amendments incorporated;
 - (b) copies of other laws and regulations to which the cooperative society is subject;
 - (c) a copy of its registered byelaws with amendments made from time to time;
 - (d) the minutes book;
 - (e) accounts of all sums of money received and expended by the cooperative society and their respective purposes;
 - (f) accounts of all purchases and sales of goods by the cooperative society;
 - (g) accounts of the assets and liabilities of the cooperative society;
 - (h) a register showing member-wise patronage of various services provided by the cooperative society;
 - (i) an upto date register of all members, and a list of members with voting rights for the current year prepared within thirty days of closure of the cooperative society's financial year;
 - (j) copies of the audit reports and special audit and/or inquiry report, if any, and compliance reports thereon; and
 - (k) all such other accounts, records and documents as may be required by this **Act** or other laws.
- (2) The books of accounts and other records shall be open for perusal by any director during business hours.
- (3) Copies of the **Act**, byelaws, minutes book pertaining to the general body meetings, reports and compliance thereon of audit, special audit and inquiry, voters' list and such accounts as relate to a member, shall be made available to any member during business hours at a fee to be decided by the board. In the case of a cooperative society with unlimited

liability, in addition, a member may also have access to all books of accounts during business hours, at a fee decided by the board.

27. Audit

(1) A cooperative society may get its accounts audited by a chartered accountant within the meaning of the Chartered Accountants **Act**, 1949, or by any other auditor from the office of the Registrar.

(2) The general body of a cooperative society shall appoint an auditor by a resolution which will be valid only until the close of the next succeeding annual general body meeting.

(3) The remuneration of the auditor shall be fixed with approval of the general body.

[Comment: Prior to Independence, audit by the department of cooperation was a facility available to cooperatives, free of cost, as it was felt that cooperatives were useful in that they helped rural people solve their own problems, but that they may find it difficult to get auditors to check their accounts. After mid-60s, audit became a monopoly of the department of cooperation, and it had to be paid quite heavily for. The 1964 **Act**, and most other cooperative laws, however, do not place any responsibility on the auditor to complete audit in time for the annual general meeting, and also, therefore, do not require the presentation of audited financial statements of the previous year to the general body each year.]

The **1995 Act** leaves the choice of auditors, from among chartered accountants and department staff, to the cooperatives, and requires timely audit, and timely submission of auditors' report and audited statements of accounts to the general body each year. Again, all these contribute to accountability and transparency in the cooperative, which were not possible under the older law.]

28. Special audit

(1) A cooperative society dealing with funds from the Government or other external individual or institutions may be subject to a special audit initiated by the Registrar at the request of such creditor, on such specific terms of reference as agreed to by the Registrar.

(2) The cost of special audit under sub-section (1) shall be met by the creditor;

Provided that where the special audit reveals serious mismanagement in the cooperative society, such costs may be recovered from the cooperative society or the persons responsible for the mismanagement.

(3) Every special audit shall be completed and the report submitted to the Registrar within one hundred and twenty days of its commencement.

(4) The special audit report shall contain a statement of

(a) every payment which appears to the audit to be contrary to law;

(b) the amount of any deficiency, waste or loss which appears to have been caused by the gross negligence or misconduct of any person in the performance of duties;

(c) the amount of any sum received which ought to have been accounted for but is not brought into account by any person; and

(d) any material impropriety or irregularity which he may observe in the expenditure or in the recovery of money due.

(5) The Registrar shall, within a period of thirty days from the date of the receipt of the special audit report communicate copies of the same to

(a) the applicant-creditor;

(b) the cooperative society concerned; and

(c) the cooperative tribunal where necessary.

[Comment: While the **1995 Act** has recognised the autonomous nature of a cooperative, and has given it full responsibility along with independence of action, it has also permitted it to raise funds from external sources. Therefore, to protect the interests of the external agent with financial stake in the cooperative, at their request, special audit by the Registrar has been provided for, and copies of the report of such special audit are expected to be submitted to the requisitioner, the cooperative under special audit, and, if necessary, to the Cooperative Tribunal. The **1995 Act** does not make the mistake which most other cooperative laws have made, of converting the one who makes a finding into the one who stands on judgement on his/her own finding, and then into the one who takes action on such judgement.]

29. Inquiry

(1) Every cooperative society shall furnish any relevant information required by the Registrar in order to enable him to satisfy whether the cooperative society has conducted its affairs in accordance with the cooperative principles and the provisions of this **Act**.

(2) The Registrar may, of his own motion, and shall on the application, of a federation to which the cooperative society concerned is affiliated, or of a

creditor to whom the cooperative society is indebted, or of not less than one-third of the directors, or of not less than one-tenth of the members, hold an inquiry or cause an inquiry to be made into the specific matter or matters relating to any gross violation of any of the provisions of this **Act** by the cooperative society.

(3) The inquiry shall be completed within a period of one hundred and twenty days from the date of ordering the inquiry.

(4) If the inquiry is not completed within the time specified in sub-section (3), it shall lapse at the end of the said period and the Registrar shall refund to the applicants, the fee collected from them.

(5) The Registrar shall, within a period of thirty days from the date of the completion of the inquiry as specified in sub-section (3) or of the lapse of the inquiry as specified in sub-section (4), communicate the report of the inquiry or the reasons for the non-completion of the inquiry, as the case may be,

- (a) to the cooperative society concerned;
- (b) to the applicant-federation, if any;
- (c) to the applicant-creditor, if any;
- (d) to the person designated by the applicant-directors, if any;
- (e) to the person designated by the applicant-members, if any;
- (f) to any person, on payment of fee fixed by the Registrar; and
- (g) to the cooperative tribunal where necessary.

(6) The inquiry officer acting under this section shall, among others, specifically state the amount of deficiency, waste or loss which appears to have been caused by the gross negligence or misconduct of any person in the performance of this duties.

[Comment: All those with a stake in a cooperative have been given the right to request the Registrar for an inquiry into any gross violation of any provision of the **Act**. Again, the Registrar is to submit copies of the inquiry report to all concerned, but not to directly take action on the findings.]

30. Power to summon and examine persons and documents

(1) The person authorised to conduct special audit under section 28 or inquiry under section 29 shall give the concerned cooperative society not less than fifteen days notice in writing of the date on which he proposes to commence the special audit or inquiry. Provided that for special reasons to be recorded in writing, he may give a shorter notice than fifteen days or commence a special audit or inquiry on the authority of the Registrar without such notice.

(2) For the purpose of any special audit or inquiry under this **Act**, the person conducting such audit or inquiry may

(a) require in writing the chairperson or other authority concerned to produce at the head office of the cooperative society such receipts, vouchers, statements, returns, correspondence, notes or any other documents as he may consider necessary for the purpose of special audit or inquiry;

(b) require in writing

(i) any employee of the cooperative society or other authority accountable for or having the custody or control of such receipts, vouchers, statements, returns, correspondence, notes or other documents to appear in person; or

(ii) any person having directly or indirectly any share or interest in any contract with the cooperative society to appear in person or by an authorised agent; before him at the head office of the cooperative society and answer any question or sign a declaration with respect thereto;

(c) in the event of an explanation being required from the chairperson or any other authority concerned invite him in writing specifying the points on which his explanation is required to meet him at the head office of the cooperative society; or

(d) exercise such other powers as can be reasonably said to be necessary for the purposes of this section.

(3) The person conducting special audit or inquiry may fix a reasonable period of not less than seven days for the purpose of compliance of the provisions of sub-section (2), and such compliance shall be mandatory on the persons required to provide information under sub-section (2).

31. Action on special audit or inquiry report

On communication of a special audit report under sub-section (5) of section 28 or an inquiry report under sub-section (5) of section 29 to the persons

concerned, the Registrar may, where the special audit or inquiry report reveals mismanagement on the part of any or all of the office bearers or directors, without prejudice to any civil or criminal proceedings to which they may be liable,

- (a) direct the board to convene a general body meeting within such reasonable time as he may specify, to enable him to bring to the notice of the general body, either directly or through his nominee, the findings of the special audit or inquiry report, for necessary action; or
- (b) approach the cooperative tribunal for necessary action.

32. Constitution of tribunals

(1) The Government may, for the purposes of this **Act**, by notification constitute as many tribunals as may be necessary for such area or areas as may be specified in the notification.

(2) The provisions of section 75 of the Andhra Pradesh Cooperative Societies **Act**, 1964 shall, mutatis-mutandis apply for the constitution of cooperative tribunals under this section.

[Comment: The **1995 Act**, although providing for the internal settlement of disputes, has also provided for the constitution of Cooperative Tribunals, for the settlement of internal disputes, for taking cognisance of violations of the provisions of the **Act** noticed by the Registrar, for deciding on action to be taken on special audit, inquiry, etc. The manner in which the tribunals are to be constituted is as laid down in the 1964 **Act**.]

33. Power of the tribunal to order recovery

(1) A member, director or chairperson of the cooperative society may and the Registrar shall file a copy of the report of the auditor or the special auditor or the inquiry officer, before the tribunal with an application for necessary action against the person on account of whose conduct the cooperative society has incurred loss. The tribunal may on the basis of such report disallow every item of expenditure incurred contrary to law and order recovery of the same from the person incurring or authorising the incurring of such expenditure, or held responsible in the said report for any deficiency, loss or unprofitable outlay occasioned by his negligence or misconduct or of any such amount which ought to have been accounted but is not brought into account by that person and shall, in every such case, specify the amount liable to be paid by such person to the cooperative society.

Explanation:- It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss, to contend that notwithstanding his negligence or misconduct the deficiency

or loss would not have occurred, but for the negligence or misconduct of some other person.

(2) The tribunal shall state in writing the reasons for its decision in respect of every dis-allowance, surcharge and a copy of such decision shall be served on the person against whom it is made in the manner laid down for the service of summons in the Code of Civil Procedure, 1908:

Provided that the tribunal shall not pass any order of recovery under this section unless the person against whom any such order is passed has had an opportunity of making a representation either by himself or through the counsel.

(3) Any person aggrieved by an order passed under this section may, within sixty days after the date of service on him of the order by the tribunal file an appeal against such order in the High Court.

(4) Where an appeal is filed in the High Court under sub-section (3), the persons who filed the application before the tribunal or, as the case may be, the Registrar shall be the sole respondent thereto, and the applicant shall not make any other person a party to the proceedings.

(5) Every order passed by the tribunal or an order passed by the High Court shall be executed in the same manner as a decree of a civil court under the Code of Civil Procedure, 1908.

34. Filing of returns

(1) Every year, within thirty days of the conduct of the annual general meeting, every cooperative society shall file the following with the Registrar, namely:

- (a) annual report of activities;
- (b) annual audited statements of accounts with auditors' report;
- (c) list of members as at the close of the year under reporting with services provided to each member;
- (d) statement on the disposal of surplus or on the allocation of deficit;
- (e) list of names of directors, their addresses and their terms of office; and
- (f) compliance reports relating to audit, special audit and inquiry, if any.

[Comment: Every cooperative is expected to file returns with the Registrar. As with the Registrar of Societies and Registrar of Companies, such filing of returns with the Registrar will ensure that that copy is taken as an authentic copy in the event of disputes.]

35. Rights and privileges

A cooperative society shall have all the rights and privileges available to cooperative societies under chapter-V of the Andhra Pradesh Cooperative Societies **Act**, 1964 and the corresponding rules, to the extent that they are not inconsistent with the provisions of this **Act**.

[Comment: Cooperatives under the old **Act** have certain rights and privileges, such as first charge on the property of their members, exemptions from certain stamps and duties, and obligation on employers – on request of cooperatives - to deduct from wages their dues to their cooperatives. The Legislative Assembly, when

enacting the new law extended these rights and privileges to cooperatives registered under the new **Act**, too.]

36. Execution of decisions, decrees and orders

In regard to execution of decisions, decrees and orders, all the provisions of chapter X of the Andhra Pradesh Cooperative Societies **Act**, 1964 shall mutatis mutandis apply to cooperative societies registered under this **Act**, such however, that all references to the Registrar in the said **Act** shall be construed to be a reference to the cooperative tribunal in their application to cooperative societies registered under this **Act**.

[Comment: In order to enable credit cooperatives to convert easily to the new **Act**, all the mechanisms available to them for the recovery of loans, etc have been incorporated in the new **Act**.]

36-A. Eligible cooperative banks

The provisions of Chapter XIII-A containing sections 115-A and 115-B of the Andhra Pradesh Cooperative Societies **Act**, 1964 shall mutatis mutandis apply to all cooperative banks.

Explanation :- For the purposes of this section a “ cooperative bank means a society registered under this **Act**, which is doing the business of banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Regulation **Act**, 1949.”

[Comment: Deposit insurance and credit guarantee are available only to such cooperative banks as are registered under a cooperative law which provides for

certain rights of intervention to the Reserve Bank of India at the time of superseding the committee of a cooperative bank, or at the time of its amalgamation, dissolution, etc. When certain urban cooperative banks were converted from the old **Act** to this **Act**, the RBI raised objections, requiring that either cooperative banks should not be registered under the new **Act**, or that similar rights of intervention as are available under the old **Act** should be provided to the RBI under the new **Act**. As a result, in 1998, section 36-A was incorporated by the Legislative Assembly in the **1995 Act**, giving RBI the rights it had over cooperative banks registered under the old **Act**.]

37. Settlement of disputes

(1) If any dispute arises touching the constitution, management or business of a cooperative society, and matters connected therewith or incidental thereto,

(a) among members, past members or persons claiming through members, past members and deceased members; or

(b) between a member, past member or a person claiming through a member, past member or deceased member and the cooperative society, its board, director, office-bearer or liquidator, past or present, or

(c) between the cooperative society or its board and any past board, director, office bearer, or the nominee, heirs, or legal representatives of any deceased director, deceased officer, of the cooperative society; or

(d) between the cooperative society and any other cooperative society; or

(e) between the promoters of a cooperative society and the Registrar; or a cooperative society and the Registrar; or

(f) between a cooperative society and liquidator of another cooperative society, or between the liquidators of two or more cooperative societies;

such disputes may be referred to the cooperative tribunal for decision;

Provided that no dispute shall be referred under this section to the cooperative tribunal unless the disputing parties exhausted all remedies that may be available in the byelaws for the settlement of disputes.

(2) Any dispute relating to elections held to a cooperative society may be referred to the cooperative tribunal for decision.

[Comment: Till mid-60s, most disputes in cooperatives used to be solved through internal dispute mechanisms. Later, however, along with government aid came involuntary mechanisms for the settlement of disputes. Through this section, the **1995 Act** has provided for cooperatives to set up their own internal systems for the settlement of disputes, and to use the Cooperative Tribunal, only after such remedies have been exhausted. What is also special is that employer-employee disputes are not covered under this section. In most cooperative laws in the country, a lot of mischief has been created by trying to take the resolution of employer-employee disputes out of the purview of industrial disputes, and into the mechanism available for constituents of cooperatives.]

38. Offences and penalties

(1) It shall be an offence under this **Act**, if a cooperative society

(a) fails to give a notice, send a return or document, or fails to do, or allow to be done, any **act** which a cooperative society is by this **Act** or under its byelaws required to give, send, do or allow to be done;

(b) wilfully neglects or refuses to do an **act** or to furnish information required for the purposes of this **Act** or does an **act** forbidden by this **Act**, or the byelaws; or

(c) makes a return, or wilfully furnishes information, in any respect false or insufficient.

(2) It shall be an offence under this **Act**, if any person or cooperative society contravenes the provisions of this **Act** or the byelaws of a cooperative society.

(3) An offence by a cooperative society shall be deemed to have been also committed by each office-bearer of the cooperative society bound by the byelaws thereof to fulfil the duties whereof the offence is a breach, or if there is no such office-bearer, then by each of the directors, unless the office-bearer or director proves to have attempted to prevent the commission of the offence.

(4) An offence under this section shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both;

Provided that where a person is guilty of misappropriation, fraud, breach of trust, cheating or any other **act** involving moral turpitude, resulting in a loss to the cooperative society, he shall be punishable under the relevant provisions of the Indian Penal Code, 1860.

[Comment: Several responsibilities have been laid by this **Act** on several persons – members, directors, office-bearers, and even registering authorities. The **1995 Act**, therefore, makes it clear that it will consider as an offence any violation of any of the provisions of the **Act**, by any person on whom the **Act** or the byelaws place responsibility. The section above also holds all directors responsible, if the byelaws are silent about delegating responsibility.

Finally, one of the key factors contributing to fraud in cooperatives has been that those responsible have been protected to some extent by cooperative laws, from criminal proceedings. The **1995 Act** makes it clear that such protection is not available to such persons.]

39. Dissolution by members

(1) A cooperative society may, by a special resolution, authorise its own dissolution;

Provided that a notice of the general meeting shall also be sent with an invitation to attend, to the Registrar, to any federations of which the cooperative society is affiliated, to creditors and to any organisation with which a partnership contract has been entered into.

(2) Invitees under the proviso of sub-section (1) shall have the right to make a representation to the general body, if they so wish to, giving reasons why dissolution is not called for.

(3) Within fifteen days of such authorisation for dissolution, the cooperative society shall send to the Registrar a copy of the authorisation to dissolve the cooperative society, by registered post.

(4) The authorisation approved in pursuance of sub-section (1) is required to set out the following, namely:-

(a) the assets and liabilities of the cooperative society;

(b) the claims of creditors, and collaborators and protected share holders;

(c) the number of members;

(d) the nature and extent of the members' interest in the cooperative society; and

(e) the name of the liquidator, if appointed by the general body, or a request to the Registrar to appoint the liquidator or a request to the Registrar to issue a certificate of dissolution where there are no assets or liabilities;

(5) Where the Registrar receives the special resolution passed in pursuance of sub-section (1), he shall cause at the expense of the cooperative society a notice of the special resolution to be published once a week for two weeks in a newspaper published or distributed in the district where the registered office of the cooperative society is located.

(6) The Registrar may require from the cooperative society, the liquidator appointed by the cooperative society or any other person who is required to furnish information, a periodical return showing

(a) the progress of dissolution;

(b) the distribution of any undistributed surplus or reserve; and

(c) any other relevant information that he may require.

[Comment: Neither state cooperative laws, nor the Multi-State Cooperative Societies **Act** permit the members of a cooperative to organise the dissolution of their cooperative. They can at most recommend the dissolution of their cooperative to the Registrar, and it is for the Registrar to take a decision on the matter. The **1995 Act** recognises that a cooperative is a creature of its members, and, therefore, it provides for the members to choose not to continue their association with one another, to dissolve their cooperative.]

40. Dissolution by Tribunal

(1) The Registrar or an interested person may, after giving the cooperative society ninety days notice of the proposed application, apply to the tribunal for an order dissolving the cooperative society, where he has reasonable cause to believe that the cooperative society has no right to be or to continue to be recognised as a cooperative society, because it

(a) obtained its registration by fraud or mistake;

(b) is serving illegal purposes;

(c) has wilfully, after notice by the Registrar, violated any of the provisions of this **Act** or its byelaws;

(d) is no longer operating in accordance with principles of cooperation and the provisions of this **Act**;

(e) has not commenced business within two years of the date of registration; or

(f) has not carried on business for the past two consecutive years.

(2) Where an interested person applies in pursuance of this section, he shall give the Registrar notice of his application and the Registrar is entitled to appear and be heard in person or by counsel.

(3) Where the tribunal receives an application in pursuance of this section, it may, after giving a reasonable opportunity to the cooperative society to state its case, order that the cooperative society be dissolved or liquidated and dissolved under the supervision of the Registrar.

(4) Where the Registrar receives an order made in pursuance of sub-section (3), he shall,

(a) where the order is to dissolve the cooperative society, issue a certificate of dissolution; or

(b) where the order is to liquidate and dissolve the cooperative society under the supervision of the Registrar, publish a notice in a newspaper published or distributed in the district in which the registered office of the cooperative society is situated..

[Comment: Since the registration of a cooperative under this **Act** is quite a simple affair, it is possible that institutions not intending to function as cooperatives manage to get registered under this **Act**, in order to obtain tax and other exemptions sometimes allowed to cooperatives. Although tax and other authorities do review the nature of transactions in “cooperatives” before allowing for exemptions, nonetheless, this **Act** has provided for the Registrar or any other interested person to move the Cooperative Tribunal against a “cooperative” continuing to be recognised as a cooperative, if indeed it is not functioning as one, and to seek its dissolution. The Registrar may also seek its dissolution if it becomes defunct or does not become functional even after registration. The registering authority has not been given the right to unilaterally dissolve a cooperative on any of these counts, as such right may lead to unhealthy practices.]

41. Appointment of liquidator

(1) Where a cooperative society is to be dissolved and no liquidator is appointed by the general body or the tribunal, the Registrar may

(a) appoint any person as a liquidator to wind up the affairs of the cooperative society; or

(b) where he is satisfied that the cooperative society has no assets and liabilities, issue a certificate of dissolution.

(2) The appointing authority shall fix the payment to the liquidator for his services.

[Comment: In cooperative laws across the country, only the Registrar has the right to appoint a liquidator. The **1995 Act** has provided for the appointment of a liquidator by the general body of a cooperative, or the Cooperative Tribunal, and only where no such liquidator has been appointed, the Registrar may appoint a liquidator. This provision ensures that the Registrar does not have an automatic interest in the appointment of a liquidator, or in the liquidation proceedings.]

42. Duties of liquidator

On his appointment, a liquidator shall

(a) immediately give notice of his appointment,

(i) in the case of liquidator not appointed by the Registrar, to the Registrar; and

(ii) to each claimant and creditor known to the liquidator;

(b) immediately publish notice of his appointment once a week for two consecutive weeks in a newspaper published or distributed in the district where the cooperative society has its registered office and take reasonable steps to give notice of the liquidation in every jurisdiction where the cooperative society carries on business;

(c) place in the notice mentioned in clauses (a) and (b) a provision requiring any person

(i) indebted to the cooperative society, to render an account and pay to the liquidator at the time and place specified any amount owing;

(ii) possessing property of the cooperative society, to deliver it to the liquidator at the time and place specified; and

(iii) having a claim against the cooperative society, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than sixty days after the first publication of the notice;

(d) take into custody and control the property of the cooperative society;

- (e) open and maintain a trust account for the moneys of the cooperative society;
- (f) keep accounts of the moneys of the cooperative society received and paid out by him;
- (g) maintain separate lists of the members, creditors and other persons having claims against the cooperative society;
- (h) where at any time he determines that the cooperative society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and
- (i) deliver to the Registrar, periodically as the Registrar may require, financial statements of the cooperative society in any form that the liquidator considers proper or that the Registrar may require.

43. Powers of liquidators

(1) The liquidator may

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisors;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the cooperative society;
- (c) carry on the business of the cooperative society as required for any orderly liquidation;
- (d) sell by public auction any property of the cooperative society;
- (e) do all acts and execute any documents in the name and on behalf of the cooperative society;
- (f) borrow money on the security of the property of the cooperative society;
- (g) settle or compromise any claims by or against the cooperative society; and
- (h) do all other things that he considers necessary for the liquidation of the cooperative society and distribution of its property.

(2) Where a liquidator has reason to believe that any person has in his possession or under his control or has concealed, withheld or misappropriated any property of the cooperative society, he may apply to the special court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

(3) Where the examination mentioned in sub-section (2) discloses that a person has concealed, withheld or misappropriated property of the cooperative society, the special court may order that person to restore the property or pay compensation to the liquidator on behalf of the cooperative society.

(4) No liquidator shall purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the cooperative society.

44. Final account

(1) A liquidator shall pay the costs of liquidation out of the property of the cooperative society and shall pay or make adequate provision for all claims against the cooperative society

(2) After paying or making adequate provision for all claims against the cooperative society, the liquidator shall apply to the Registrar for approval of his final accounts and for permission to distribute in money or in kind the remaining property of the cooperative society in accordance with the byelaws.

(3) Where the Registrar approves the final accounts rendered by a liquidator in pursuance of sub-section (2), he shall,

(a) issue directions with respect to the custody or disposal of the documents and records of the cooperative society; and

(b) discharge the liquidator.

(4) Where the Registrar discharges a liquidator in pursuance of sub-section (3), he shall issue a certificate of dissolution.

(5) The cooperative society ceases to exist on the date shown in the certificate of dissolution which shall not be later than two years after the appointment of the liquidator.

[Comment: In most cooperative laws in the country, liquidators and those who appoint liquidators, develop a vested interest in not dissolving the cooperative, and in keeping it undissolved for the length of time that it is in a position to meet their costs and the costs of other officers. The **1995 Act** requires the liquidation proceedings to be completed within a maximum of two years from the

appointment of the liquidator, thus ensuring that liquidation proceedings are conducted briskly.]

45. Fee for services

The Registrar may charge a reasonable fee for any of the services provided by him or by an officer authorised by him under the provisions of this **Act**.

[Comment: The **1995 Act** has created the space for the emergence of strong, vibrant, member-sensitive, and member-controlled cooperatives, which should be able to pay for the services provided by the office of the Registrar. In certain countries, the departments of cooperation have managed to meet their costs through fee raised from services. In turn, they began to provide technical and support services to the cooperative movement. It should be possible, over a period of time for the government department dealing with mutually aided cooperatives to play the role of a development department.]

- X -

Statement of Objects and Reasons

1. In early 1960s, cooperative legislation all over the country underwent major changes with a view to enabling State and Union Governments to play an active role in the promotion and development of cooperatives. Cooperatives were viewed as important tools to be used by the state to ensure that disadvantaged sections of people could have access to subsidised credit and other production inputs, especially in rural areas. In Andhra Pradesh, too, at this time, the Andhra Pradesh Cooperative Societies **Act**, 1964 was enacted, and although it was introduced as a consolidation of the two earlier Acts then prevailing in Andhra and Telengana areas, respectively, it was guided by the findings of the All India Rural Credit Survey Committee (Gorwala Committee 1954), which recommended an active role for the state in the spread of the cooperative movement.
2. Over the years, however, increased state participation in the financing and management of cooperatives has led to an unfortunate situation where cooperatives themselves, by and large, have started to perceive themselves not as member-controlled, member-sensitive business, guided by the universally accepted principles of cooperation, but as channels for government subsidies and largesse. Sound and sustainable cooperative business, accountability, responsibility and self-reliance have taken a back seat.
3. At a time when deregulation and liberalisation are enabling other forms of business to break new ground, it appears necessary to enable businesses registered as cooperatives also to have at least the same degree of freedom to conduct their affairs, if these businesses are to have a fair chance of being able to compete successfully with other business.
4. Cooperative financing organisations, such as the National Bank for Agriculture and Rural Development, the National Cooperative Development Corporation and the National Dairy Development Board have also been seeking ways by which they can where possible deal directly with cooperative societies without necessarily having to involve government.
5. Given, however, the dependence on government of several cooperative societies, either because of the very objects of these cooperatives or because of their weak nature, it would

appear not very responsible on the part of the Government to withdraw its support and intervention altogether, or suddenly. In the case of such cooperatives, the provisions of the AP Cooperative Societies **Act**, 1964 are considered necessary.

6. On the other hand, the Government recognises that there are some cooperatives which may have some government funds but are not dependent on such funds or on government assistance in other forms for their survival. These cooperatives need to be given greater autonomy and encouraged to pursue the legitimate interests of their members in an effective, self-reliant, responsible, accountable and democratic manner. The Government also recognises that enabling legislation is required if ordinary people who expect to benefit from the cooperative form of business, without being dependent on governmental resources, are to voluntarily promote and effectively develop services for themselves through their own cooperative societies.

7. In the backdrop of the above changed perception, the Government have decided to undertake legislation in order to promote self-reliant and autonomous cooperative societies and make the cooperative movement more vibrant in the State. The salient features of the proposed legislation are,

- (1) to enunciate the cooperative principles which primarily place an accent on voluntary, self-financing, autonomous bodies far removed from state control;
- (2) to enable not less than ten individuals belonging to different families to form a cooperative society and confer on it the status of a body corporate;
- (3) to enable the cooperative societies to regulate their functioning by framing byelaws subject to the provisions of the **Act** in respect of the various matters specified in the legislation;
- (4) to enable the cooperative societies to change the form or the extent of their liability, to transfer their assets and liabilities, to divide or amalgamate in furtherance of their stated objectives;
- (5) to enable the societies registered under the Andhra Pradesh Cooperative Societies **Act**, 1964 to become cooperative societies registered under this **Act** by making a suitable provision therefor;
- (6) to enable the cooperative societies to mobilise their own funds;
- (7) to empower the cooperative societies to provide for the qualifications and disqualifications for membership;
- (8) to provide for the constitution, powers and functions of the board of directors and for matters incidental thereto;
- (9) to define the powers and functions of the general body, etc;
- (10) to make the cooperative societies responsible to hold the elections and to regulate the process thereof;

11. to provide for proper accountability and for that purpose to conduct audit, special audit, inquiry and for the recovery of loss caused to the society by misconduct or otherwise;

(12) to provide for the settlement of disputes by constituting a cooperative tribunal; and

(13) for other incidental and consequential matters.

8. This bill seeks to give effect to the above decisions.

Devendar Goud

Minister for Cooperation

Background note on

Andhra Pradesh Mutually Aided Cooperative Societies **Act 1995**

The Andhra Pradesh Mutually Aided Cooperative Societies **Act of 1995** broke new ground in the history of the Indian cooperative movement. This is a cooperative law which respects the right of members to fully own and control their own cooperative enterprise. The enactment, an **act** of political courage and wisdom by the Andhra Pradesh Government, was the final step in a long effort to create a new legislative environment for cooperatives in Andhra Pradesh.

Between February and September of 1994, cooperators held several workshops in the state on the need for amending the AP Cooperative Law. These included a workshop of credit cooperative leaders from across the state, one of dairy cooperative leaders from all the milk unions, another of eminent cooperators, lawyers, administrators and others, and a fourth of leaders of political parties in the state. In all the workshops, a strong recommendation was made to the Government of Andhra Pradesh to change the cooperative law. In mid-1994, the Cooperative Development Foundation (CDF), a Hyderabad-based organisation committed to strengthening the cooperative movement in Andhra Pradesh, set up a Study Group on the AP Cooperative Law, with Shri M Ramakrishnayya (former Deputy Governor, Reserve Bank of India and former Chairman, Nabard) as chairperson, Shri K Pratap Reddy (Senior Advocate, AP High Court) and Prof GRS Rao (Chairperson, Centre for Public Policy and Systems, Administrative Staff College of India) as members.

The Study Group presented its report to the CDF in the last week of December 1994. The process adopted by the Study Group was as educative as the report itself. This Study Group interviewed several cooperators, academicians,

legislators, department officers, development workers, cooperators working outside the formal framework of the cooperative law, administrators, jurists, lawyers and others during hearings held in Hyderabad, Tirupathi, Vijayawada, Visakhapatnam and Warangal. It also sent out a questionnaire to several persons associated with cooperatives in Andhra Pradesh, elsewhere in India, and abroad. The Study Group reviewed reports of earlier committees on cooperatives mainly the report of the Choudhury Brahma Prakash Committee and the Model **Act** drafted by it. It also reviewed judgements of the AP High Court relating to cooperatives, as well as judgements of the Supreme Court relating to fundamental rights - the right to equality before the law, the right to form association and the right to practice any business - as applicable to cooperatives.

The report of the Study Group was formally presented to the Government of Andhra Pradesh on 2nd February 95, at a special function at which Shri LC Jain, former Planning Commission Member responsible for the setting up of the Brahma Prakash Committee and Shri Devender Goud, Minister for Cooperation, were the chief guests. The Secretary (Cooperation) and Registrar of Cooperatives were also present.

Shri Jain and Shri Goud had also met the Chief Minister Shri NT Rama Rao, and discussed with him the need to change the cooperative law so that cooperatives could enjoy at least the same degree of freedom as available to other forms of business. The Chief Minister assured them that his government was committed to guaranteeing cooperatives full autonomy.

Dr V Kurien, Chairman, National Dairy Development Board, and Dr A Appa Rao, President, Cooperative Development Foundation, met and urged the Chief Minister to amend the cooperative law to be in consonance with the principles of cooperation. The Chief Minister unequivocally expressed his commitment to freeing cooperatives from oppressive legislation, and enabling them to function as member-controlled, member-sensitive, competitive, voluntary, self-reliant business.

Shri Devender Goud, Minister for Cooperation, Shri VS Sampath, Secretary to the Government, Shri S Bhalerao, Registrar of Cooperative Societies, and Dr N Jayaprakash Narayan, Secretary to the Chief Minister, held discussions with several well wishers, development financing agencies and constituents of the cooperative movement within and outside Andhra Pradesh. Thereafter, the AP Mutually Aided Cooperative Societies Bill **1995** was drafted. The Chief Minister discussed the draft in detail with the Minister. The cabinet, after careful review of the draft, gave its approval. On 4th May **1995**, during the debate on the Bill in the Legislative Assembly, representatives of all parties - Telugu Desam, Congress, CPI, CPM, BJP - stated their strong support for this initiative, and when the matter was brought to a vote, it was passed without dissent.

The Andhra Pradesh Mutually Aided Cooperative Societies **Act 1995** is a milestone in the history of the Indian cooperative movement, and it needed a government with foresight, a government with a holistic appreciation of economic liberalisation, of deregulation, of decentralisation, to bring about this momentous change.

-X-

Comparison of AP Cooperative Laws of 1964 and **1995**

Andhra Pradesh	Andhra Pradesh Mutually Aided
Cooperative Societies Act , 1964	Cooperative Societies Act , 1995

1. Principles of Cooperation

Not stated in the **Act**

Principles of cooperation as internationally accepted at the time of enactment are incorporated in the **Act**

2. Role of Government

Appoints Registrar; can direct Registrar; can postpone elections; can exempt cooperatives from legal provisions; can nominate directors to board; can appoint persons-in-charge for state level federations; frames rules; can handle appeals, revisions, reviews; can give directions to cooperatives regarding reservations on staff; can hold equity in cooperatives; sets up Special Courts and Tribunals

Appoints Registrar; can not provide share capital, but may provide other funds and guarantee to cooperatives based on memorandum of understanding that it may enter into with cooperative; sets up Special Courts and Tribunals

3. Role of Registrar

Registers cooperative at his discretion; registers byelaws; must approve of transfer of assets & liabilities, of division, of amalgamation; can compulsorily amalgamate, divide, etc; can classify cooperatives; can amend byelaws compulsorily; must approve of all bylaw amendments; can admit members;

Has to register cooperative and its byelaws if they are in consonance with the **Act**; registers amendments to certain bylaw provisions; takes on record amendments to most bylaw provisions; convenes general body meeting where a board fails to do so in stipulated time; receives annual reports and

must approve of expulsion of members; can disqualify committee members; can call for special general meetings and for meetings of no-confidence; conducts elections; can supersede committees; appoints persons-in-charge; can give directions for cooperatives; fixes honorarium to president; approves of bank in which deposits can be kept; must approve of investments in own business; audits; inspects; inquires; can summon documents etc; can surcharge; can suspend officers; settles disputes; winds up cooperative; appoints liquidator; can cancel registration; can recover dues; serves on cooperative tribunal; sanctions institution of prosecution; handles appeals, revisions, reviews; can appoint supervisory staff in cooperatives; constitutes common cadres; approves of staffing pattern; must approve of appointment/removal of chief executive where cooperative is in receipt of government aid

audited financial statements; inquires; can conduct special audit where non-member funds are involved; can recommend dissolution to the tribunal if a cooperative works in contravention of the **Act** and principles of cooperation, etc

4. Rules

The government is empowered to make rules on every subject covered by the **Act**

There is no rule-making power. All affairs of a cooperative are to be regulated by the provisions of the **Act** and the byelaws of the cooperative

5. Multiplicity of cooperatives

Registration can be refused because of non-viability, conflict of area of jurisdiction, for same class of cooperative

Registration cannot be refused except if byelaws are not in accordance with **Act**, therefore, multiplicity of organisations possible Registrar does not have the right to classify cooperatives

6. Membership

In matters of admission, disqualification and expulsion of members, the Registrar has final say

Admission disqualification and expulsion of members are the exclusive prerogative of the cooperative

7. Management

Size of board fixed; term of board fixed; composition of board fixed; elections by Registrar; reservations on board

Size, term, composition of board left to byelaws; staggered terms; elections by incumbent board failing which by ad-hoc committee; disqualification of all directors for not conducting elections in time, for not conducting general body meetings in time,

for not placing audited accounts before annual general meeting

8. Staff

Common cadre possible; too little authority with board; Registrar must approve staffing pattern, service conditions, salaries, etc; an improve deputationists from government

All staff fully accountable to cooperative; deputationists from government and other organisations possible if a cooperative so deserves

9. Share capital

Government and other non-members may contribute share capital

Members alone can contribute share capital and non-member share capital is forbidden

10. Mobilisation of funds

Cooperatives may mobilise funds within the limits fixed by Registrar

Cooperatives may mobilise funds within the limits fixed by byelaws

11. Investment of funds

Investment of funds even in own business restricted; lending limits are fixed by Registrar

No restriction in investment in own business, but other investments to be in any non-speculative manner specified by byelaws

12. Deficit

The issue of deficit not addressed; accumulated deficits are dealt with at the time of liquidation

Deficit is required to be analysed and dealt with on an annual basis; members have to meet the deficit in proportion to their actual use or commitment to the use of the services of the cooperative during the year, if the deficit cannot be set off against reasons

13. Audit

Audit is the responsibility of audit wing of the department; choice of auditors not available to cooperatives; no penalty for non-conduct of audit

Audit is the responsibility of the board; auditor to be chartered accountant or from Registrar's office at cooperative's discretion; non presentation of audit report to general body in stipulated time results in disqualification of all directors

14. Subsidiaries

No subsidiary organisation can be set up by a cooperative

Subsidiary organisations may be set up by a cooperative

15. Rights and privileges

Exemptions from payments of contains stamps, duties, etc

Same as available in 1964 Act

16. Disputes

Registrar or his appointee is the sole arbitrator

Bylaws must contain manner of settlement of disputes, only after which Tribunal has been given role; Registrar has no role

17 Offences

Offences to be tried by Special Courts; several offences mentioned in detail and their penalties, too; prior permission of Registrar necessary for prosecution

Special Courts to look at offences; directors and officers to prove that they tried to prevent offence, otherwise held responsible for the offence; any affected party can move Special Court; any persons entrusted with responsibility by the Act will be deemed to have committed offences if the responsibility is neglected

18. Dissolution

Only by Registrar, only in the event of poor functioning; voluntary dissolution by members is not possible; no time limit on liquidation proceedings

By members and by Tribunal; not just because of non-viability, but also because of lack of interest in continuing cooperative; for not functioning in accordance with the Act and Principles of Cooperation; liquidations proceedings to be completed in 2 years

19. Final disposal of assets

After dissolution, surplus assets of a cooperative will vest in Registrar

After dissolution, surplus assets of a cooperative will be disposed of in accordance with the bylaws of that cooperative

20. Cooperative

Projected as an instrument for public good, as channel for distribution of government resources

Defined as instrument of its members for their economic social betterment, based on mutual aid.

